IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

WP(C).No. 8895 of 2007(H)

PETITIONER:

BR.DAVIS, S/O S.P.GEORGE,
AGED 47 YEARS, SRAMBICKAL HOUSE,
EDAYAR P.O., BINANIPURAM, ERNAKULAM.

BY ADV. SRI.DENIZEN KOMATH

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY ITS SECRETARY, MINISTRY OF HOME AFFAIRS, SECRETARIATE, THIRUVANANTHAPURAM.

2. RURAL POLICE SUPERINTENDENT, ALUVA.

3. SUB INSPECTOR OF POLICE, BINANIPURAM.

BY GOVERNMENT PLEADER SRI.S.U. NAZAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R. BASANT, J.

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W.P.C.No. 8895 of 2007 H

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Dated this the 25th day of May, 2007

JUDGMENT

The petitioner is the defacto complainant/injured victim in a prosecution, inter alia, under Section 326 r/w. 149 I.P.C. In the complaint/F.I. statement before the police, five persons are named specifically. Overt acts were also alleged. It is the grievance of the petitioner that a proper investigation is not conducted and hastily the first accused has been dropped from the array of accused. The first accused was identified as one of the miscreants in the F.I. statement. But even without further interrogating the complainant, on the very first day of investigation a decision has been taken that the first accused is not guilty and has been dropped from the array of parties.

2. Totally dissatisfied with the quality of investigation, this Court directed the Investigating Officer to appear in person and explain the course followed by him. It is conceded that though the first accused is named in the F.I. statement and in the wound certificate, he was dropped from the array of parties even without further interrogating the complainant on the short ground that some

other eye witnesses did not specifically refer to him. Final report has already been filed. The short prayer of the petitioner now is that a further investigation may be ordered to be conducted by a competent superior police official.

3. I am thoroughly dissatisfied with the quality of investigation. But I take note of the submissions made by the Investigating Officer, who appeared before court personally as also the learned Prosecutor that it is only inexperience and no malafides is involved in the nature of the investigation conducted. I shall not embark on a more detailed consideration on that aspect. I agree with the learned counsel for the petitioner - and that course is not opposed by the learned Prosecutor - that a further investigation can be directed to be held in the matter under Section 173(8) Cr.P.C.

4. This Writ Petition is accordingly allowed. The 2nd respondent (Rural Police Superintendent, Alwaye) shall get further investigation conducted under Section 173(8) Cr.P.C. by a competent superior police official, not below the rank of a Dy.S.P. Necessary orders to this effect shall be issued by the second respondent with copy to the petitioner herein within a period of one month from this date.

5. Hand over copy of the judgment to the learned Prosecutor today itself.

(R. BASANT)
Judge

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R. BASANT, J.
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W.P.C.No. 8895 of 2007 H

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Dated this the 23rd day of March, 2007

O R D E R

I have heard the learned counsel for the petitioner and the learned Prosecutor. The case diary has been made available for my perusal. I must say that I am totally dissatisfied with the quality of investigation conducted in the matter. I am satisfied that the Investigating Officer, who conducted initial investigation, must be given an opportunity to explain the investigation conducted by him as I do think that certain observations against the quality of investigation conducted by such officer is absolutely necessary in this case and it will be abdication of jurisdiction not to refer to such inferior quality of investigation.

2. The learned Prosecutor shall direct the officer, who conducted the initial investigation, to appear in person and file a statement explaining the acts done by him in the investigation of the crime. How was the first accused deleted from the array of parties as early as on 18.11.06 without and before further questioning the complainant or the doctor, who had examined the complainant or even without verifying the identity of the miscreants by some of the witnesses, who were not able to name the

assailants.

3. The Officer shall file such statement and appear in person before this Court on 13.4.2007.

4. Hand over copy to the learned Prosecutor.

(R. BASANT)
Judge

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